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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/735,245	12/12/2003	Wolfgang Hock	964-032165	9805
28289	7590	05/05/2006	EXAMINER	
THE WEBB LAW FIRM, P.C. 700 KOPPERS BUILDING 436 SEVENTH AVENUE PITTSBURGH, PA 15219			TO, TOAN C	
			ART UNIT	PAPER NUMBER
			3616	

DATE MAILED: 05/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/735,245	HOCK ET AL.	
	Examiner	Art Unit	
	Toan C. To	3616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 12 December 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 8-10 is/are rejected.
- 7) ☒ Claim(s) 6,7 and 11-18 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12-12-2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>11/23/05; 2/13/06</u>   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 101***

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. The claimed invention is directed to non-statutory subject matter. Recitation "the right leg" is directed to or including within its scope a human, therefore it will not be considered to be patentable subject matter under 35 U.S.C 101. See 1077 OG 24 (April 21, 1987). Examiner suggests this recitation be deleted.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 3 and 5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 3 recites the limitation "the region" and "the seat contour" in line 2. There are insufficient antecedent basis for these limitations in the claim.

Claims 5 contains the **trademark/trade name Bowden**. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any

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particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-3, and 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schatz (U.S. 6,446,758).

Schatz discloses an industrial truck having dual pedal control, comprising: a pedal (80) configured to be operated by an operator for forward travel and a pedal (82) configured to be operated by the left leg of an operator for reverse travel; a driver's seat (34) which can be swiveled about an approximately vertical axis (68) of rotation, wherein the driver's seat (34) is capable of swiveling in a clockwise direction from a normal position associated with a forward travel direction by an angle into an oblique position associated with a reverse travel direction; wherein the axis of rotation of the driver's seat is defined in a region of the seat front edge, within a seat contour (see position of the axis of rotation 68 in figure 2); wherein the industrial truck is a forward control fork-lift truck.

Schatz does not explicitly disclose the particular range for the rotation angles such as the angle within the range of 15 to 25 degrees, 15 to 20 degrees or approximately 17 degrees as claimed. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the vehicle seat of Schatz to rotate within the range of rotation angles as indicated above, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable range involves only routine skill in the art. *In re Aller* 105 USPQ 233.

7. Claims 1-2, 4-5, and 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over European Publication No. EP-1260477.

European Publication No. EP-1260477 discloses an industrial truck having dual pedal control, comprising: a pedal (47) configured to be operated by an operator for forward travel and a pedal (48) configured to be operated by the left leg of an operator for reverse travel; a driver's seat (4) which can be swiveled about an approximately vertical axis (19) of rotation, wherein the driver's seat (4) is capable of swiveling in a clockwise direction from a normal position associated with a forward travel direction by an angle into an oblique position associated with a reverse travel direction; wherein the industrial truck is a forward control fork-lift truck.

European Publication No. EP-1260477 fails to disclose the rotation angle within the range of 15 to 25 degrees, 15 to 20 degrees or approximately 17 degrees. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the vehicle seat of Schatz to rotate within the range of rotation angles

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as indicated above, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable range involves only routine skill in the art. *In re Aller* 105 USPQ 233.

As to claims 4-5, European Publication No. EP-1260477 discloses the industrial truck, wherein the driver's seat (4) has an armrest (5) to which an unlocking element (30) is fixed, wherein the unlocking element (30) is operatively connected to a locking device (25) which secures the driver's seat (4) against rotation at least in the normal position and in the oblique position; wherein the unlocking element (30) is operatively connected to the locking device by a cable (31).

#### ***Allowable Subject Matter***

8. Claims 6-7, and 11-18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Toan C. To whose telephone number is (571) 272-6677. The examiner can normally be reached on Mon-Fri (8:00-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Dickson can be reached on (571) 272-6669. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TTO

April 29, 2006